

1 TRINETTE G. KENT (State Bar No. 222020)  
2 3219 E Camelback Road, #588  
3 Phoenix, AZ 85018  
4 Telephone: (480) 247-9644  
5 Facsimile: (480) 717-4781  
6 E-mail: tkent@lembertglaw.com

7 Of Counsel to  
8 Lemberg Law, LLC  
9 43 Danbury Road  
10 Wilton, CT 06897  
11 Telephone: (203) 653-2250  
12 Facsimile: (203) 653-3424

13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Attorneys for Plaintiff,  
Allison Brown

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

Allison Brown,

Case No.:

Plaintiff,

**COMPLAINT FOR DAMAGES**

vs.

Simon's Agency, Inc,

**FOR VIOLATIONS OF:**

1. THE TELEPHONE CONSUMER PROTECTION ACT;
2. THE FAIR DEBT COLLECTION PRACTICES ACT; AND
3. THE ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT

Defendant.

**JURY TRIAL DEMANDED**

1 Plaintiff, Allison Brown (hereafter “Plaintiff”), by undersigned counsel, brings  
2 the following complaint against Simon’s Agency, Inc. (hereafter “Defendant”) and  
3 alleges as follows:

5 **JURISDICTION**

6 1. This action arises out of Defendant’s repeated violations of the  
7 Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* (“TCPA”), repeated  
8 violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.*  
9 (“FDCPA”), and repeated violations of the Rosenthal Fair Debt Collection Practices  
10 Act, Cal. Civ. Code § 1788, *et seq.* (“Rosenthal Act”).

11 13 2. Jurisdiction of this Court arises under 47 U.S.C. § 227(b)(3), 15 U.S.C. §  
12 14 1692k(d), Cal. Civ. Code 1788.30(f), 28 U.S.C. § 1331 and 28 U.S.C. § 1367.  
13 15

16 3. Venue is proper before this Court pursuant to 28 U.S.C. § 1391(b), where  
17 the acts and transactions giving rise to Plaintiff’s action occurred in this district and/or  
18 where Defendant transacts business in this district.  
19

20 **PARTIES**

21 4. Plaintiff is an adult individual residing in Hermosa Beach, California, and  
22 is a “person” as defined by 47 U.S.C. § 153(39) and Cal Civ. Code § 1788.2(g).  
23

24 5. Plaintiff is a “consumer” as defined by 15 U.S.C. § 1692a(3), and is a  
25 “debtor” as defined by Cal. Civ. Code § 1788.2(h).  
26

27

28

1       6.     Defendant is a business entity located in Liverpool, New York, and is a  
2     “person” as the term is defined by 47 U.S.C. § 153(39) and Cal Civ. Code §  
3  
4     1788.2(g).

5       7.     Defendant uses instrumentalities of interstate commerce or the mails in a  
6  
7 business the principle purpose of which is the collection of debts and/or regularly  
8 collects or attempts to collect debts owed or asserted to be owed to another, and is a  
9 “debt collector” as defined by 15 U.S.C. § 1692a(6).

10  
11       8.     Defendant, in the ordinary course of business, regularly, on behalf of  
12 itself or others, engages in the collection of consumer debts, and is a “debt collector”  
13 as defined by Cal. Civ. Code § 1788.2(c).

## **ALLEGATIONS APPLICABLE TO ALL COUNTS**

17 9. Plaintiff is a natural person allegedly obligated to pay a debt asserted to  
18 be owed to a creditor other than Defendant.

19       10. Plaintiff's alleged obligation arises from a transaction in which property,  
20 services or money was acquired on credit primarily for personal, family or household  
21 purposes, is a "debt" as defined by 15 U.S.C. § 1692a(5), and is a "consumer debt" as  
22 defined by Cal. Civ. Code § 1788.2(f).  
23  
24

25        11. At all times mentioned herein where Defendant communicated with any  
26 person via telephone, such communication was done via Defendant's agent,  
27 representative or employee.  
28

1       12. At all times mentioned herein, Plaintiff utilized a cellular telephone  
2 service and was assigned the following telephone number: 315-XXX-7074 (hereafter  
3 “Number”).  
4

5       13. Defendant placed calls to Plaintiff’s Number in an attempt to collect a  
6 debt.  
7

8       14. Defendant placed the aforementioned calls using an automatic telephone  
9 dialing system (“ATDS”) and/or by using an artificial or prerecorded voice  
10 (“Robocalls”).  
11

12       15. Upon answering Defendant’s calls, Plaintiff was met with a prerecorded  
13 message, instructing Plaintiff to dial one (1) to confirm her identity.  
14

15       16. In or around December of 2016, during a live conversation, Plaintiff  
16 demanded that Defendant cease calling her Number.  
17

18       17. Despite Plaintiff’s unequivocal demand, Defendant continued to call her  
19 Number using an ATDS and/or Robocalls at an excessive and harassing rate.  
20

21       18. In addition, on multiple occasions Defendant called Plaintiff’s Number  
22 prior to 8:00 a.m.  
23

24       19. Defendant’s calls directly and substantially interfered with Plaintiff’s  
25 right to peacefully enjoy a service that Plaintiff paid for and caused Plaintiff to suffer  
26 a significant amount of anxiety, frustration, and annoyance.  
27  
28

## COUNT I

**VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT, 47  
U.S.C. § 227, et seq.**

20. Plaintiff incorporates by reference all of the above paragraphs of this complaint as though fully stated herein.

21. The TCPA prohibits Defendant from using, other than for emergency purposes, an ATDS and/or Robocalls when calling Plaintiff's Number absent Plaintiff's prior express consent to do so. *See* 47 U.S.C. § 227(b)(1).

22. Defendant's telephone system has the earmark of using an ATDS and/or using Robocalls in that Plaintiff, upon answering calls from Defendant, heard a prerecorded message, instructing Plaintiff to dial one (1) to confirm her identity.

23. Defendant called Plaintiff's Number using an ATDS and/or Robocalls without Plaintiff's consent in that Defendant either never had Plaintiff's prior express consent to do so, or such consent was effectively revoked when Plaintiff requested that Defendant cease all further calls.

24. Defendant continued to willfully call Plaintiff's Number using an ATDS and/or Robocalls knowing that it lacked the requisite consent to do so in violation of the TCPA.

25. Plaintiff was harmed and suffered damages as a result of Defendant's actions

26. The TCPA creates a private right of action against persons who violate the Act. *See* 47 U.S.C. § 227(b)(3).

27. As a result of each call made in violation of the TCPA, Plaintiff is entitled to an award of \$500.00 in statutory damages.

28. As a result of each call made knowingly and/or willingly in violation of the TCPA, Plaintiff may be entitled to an award of treble damages.

## **COUNT II**

**VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT, 15  
U.S.C. § 1692, et seq.**

29. Plaintiff incorporates by reference all of the above paragraphs of this complaint as though fully stated herein.

30. The FDCPA was passed in order to protect consumers from the use of abusive, deceptive and unfair debt collection practices and in order to eliminate such practices.

31. Defendant attempted to collect a debt from Plaintiff and engaged in “communications” as defined by 15 U.S.C. § 1692a(2).

32. Defendant communicated with Plaintiff at a time or place known to be inconvenient to the Plaintiff, in violation of 15 U.S.C. § 1692c(a)(1).

33. Defendant engaged in conduct, the natural consequence of which was to harass, oppress, or abuse Plaintiff, in connection with the collection of a debt, in violation of 15 U.S.C. § 1692d.

1       34. Defendant caused Plaintiff's phone to ring or engaged Plaintiff in  
2       telephone conversations repeatedly or continuously, with the intent to annoy, abuse  
3       and harass Plaintiff, in violation of 15 U.S.C. § 1692d(5).  
4

5       35. The foregoing acts and/or omissions of Defendant constitute violations of  
6  
7 the FDCPA, including every one of the above-cited provisions.

8       36. Plaintiff was harmed and is entitled to damages as a result of Defendant's  
9 violations.

## COUNT III

**VIOLATIONS OF THE ROSENTHAL FAIR DEBT COLLECTION  
PRACTICES ACT, Cal. Civ. Code § 1788, et seq.**

14  
15 37. Plaintiff incorporates by reference all of the above paragraphs of this  
16 complaint as though fully stated herein.

17       38. The Rosenthal Act was passed to prohibit debt collectors from engaging  
18           in unfair and deceptive acts and practices in the collection of consumer debts.  
19

20       39. Defendant caused Plaintiff's telephone to ring repeatedly or continuously  
21 to annoy Plaintiff, in violation of Cal. Civ. Code § 1788.11(d).

23 40. Defendant communicated with Plaintiff with such frequency as to be  
24 unreasonable, constituting harassment, in violation of Cal. Civ. Code § 1788.11(e).

25       41.   Defendant did not comply with the provisions of 15 U.S.C. § 1692, *et*  
26       seq. in violation of Cal. Civ. Code § 1788.17  
27

42. Plaintiff was harmed and is entitled to damages as a result of Defendant's violations.

## PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendant for:

- A. Statutory damages of \$500.00 for each call determined to be in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3);
- B. Treble damages for each violation determined to be willful and/or knowing under the TCPA pursuant to 47 U.S.C. § 227(b)(3);
- C. Actual damages pursuant to 15 U.S.C. § 1692k(a)(1);
- D. Statutory damages of \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A);
- E. Actual damages pursuant to Cal. Civ. Code § 1788.30(a);
- F. Statutory damages of \$1,000.00 for knowingly and willfully committing violations pursuant to Cal. Civ. Code § 1788.30(b);
- G. Costs of litigation and reasonable attorneys' fees pursuant to 15 U.S.C. § 1692k(a)(3) and Cal. Civ. Code § 1788.30(c);
- H. Punitive damages; and
- I. Such other and further relief as may be just and proper.

## **TRIAL BY JURY DEMANDED ON ALL COUNTS**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

DATED: May 22, 2017

TRINETTE G. KENT

By: /s/ Trinette G. Kent  
Trinette G. Kent, Esq.  
Lemberg Law, LLC  
Attorney for Plaintiff, Allison Brown